

# High Court Opens Eavesdrop Records

POINT 3/11/64

WASHINGTON (AP) — The Supreme Court gave convicted spies and extortionists the right Monday to see for themselves if they were victims of illegal bugging.

The 5-3 ruling opens government eavesdrop records against advice of the Justice Department that the court not do so. The court noted frankly that as a result the government might be forced to drop some spy prosecutions to avoid revealing national security secrets.

Still, said Justice Byron R. White for the majority, the only fair way to decide if the government built its case on illegal eavesdropping is to make transcripts of the bugged conversations available to the victim and his lawyer.

The decision settles a long-standing squabble over access to government bugging records. Evidence based on illegal eavesdropping cannot be used in federal trials and the government already is obliged to disclose instances of illegal eavesdropping.

The question was whether a federal judge, on the basis of logs forwarded by the government, should decide on his own if a prosecution was tainted or whether the records should be available to the defendant and a judgment made at an adversary hearing that includes cross-examination of government witnesses.

The court decided the Fourth Amendment's command against unreasonable searches and seizures could be obeyed only if the records are available to the defense.

"An apparently innocent phrase, a chance remark, a reference to what appears to be a neutral person or event, the identity of a caller or the individual on the other end of a telephone or even the manner of speaking or of using words may have special significance to one who knows the more intimate facts of an accused's life," wrote White, a former Justice Department official.

He said the ruling does not mean anyone "will have an unlimited license to rummage in the files of the Department of Justice."

Moreover, White said, the disclosure will be limited to the transcripts of the defendant's own conversations and others which took place on his "premises."

Additionally, White went on, the federal judge conducting these hearings can and should put the defendant and his lawyer under orders forbidding disclosure of the materials they inspect.

Nevertheless, two justices, Abe Fortas and John Harlan vigorously dissented from opening records in security cases.

Fortas warned disclosure of some of this material could pose "a serious danger to the national interest." And Harlan said an accused spy could find out that the United States has ob-

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tained information his foreign government believes is still secret.

The majority, through White, conceded "it may be that the prospect of disclosure will cause the government to dismiss some prosecutions in deference to national security or third party interests."

The ruling was given in separate spy and extortion cases.

The court also took important actions in the area of civil rights demonstrations, upsetting convictions of Negro leaders Dick Gregory and the Rev. Fred L. Shuttlesworth but shunning an effort to limit the discipline powers of university administrators.